

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT OUTLAW	:	CIVIL ACTION
	:	
v.	:	
	:	
DAVID VARANO, et al.	:	NO. 14-3008

ORDER

AND NOW, this 11th day of December, 2014, upon consideration of petitioner Robert Outlaw's pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (docket entry #2), our Order referring this matter to the Hon. Henry S. Perkin for a report and recommendation (docket entry #4), and that report and recommendation (docket entry #12), to which petitioner did not object within the period specified by Loc. R. Civ. P. 72.1 IV (b), and the Court agreeing with Judge Perkin that petitioner's claim under Miller v. Alabama, -- U.S. --, 132 S. Ct. 2455 (2012) is unexhausted and currently pending before the state court in a PCRA petition, that petitioner's claim is not plainly meritless, and that there is no evidence that he has engaged in abusive litigation tactics or intentional delay, rendering the use of a "stay and abey" procedure appropriate, see Rhines v. Weber, 544 US. 269, 275-77 (2005), and the appointment of counsel at this time is not required since we will not be ordering an evidentiary hearing and the interests of justice do not compel such appointment at this time, it is hereby ORDERED that:

1. Judge Perkin's report and recommendation (docket entry #12) is APPROVED and ADOPTED;
2. Petitioner's pro se petition (docket entry #2) is STAYED and HELD IN ABEYANCE until the conclusion of petitioner's state court proceedings;

3. Petitioner must RETURN TO COURT within thirty (30) days of the conclusion of the state court proceedings, and if he does not, this stay and abeyance order will be vacated and his petition dismissed without prejudice;

4. Petitioner's motion for appointment of counsel is DENIED WITHOUT PREJUDICE; and

5. The Clerk of Court shall TRANSFER this case from our Active Docket to our Civil Suspense Docket pending definitive state court action.

BY THE COURT:

/s/ Stewart Dalzell, J.